

AMENDED IN SENATE AUGUST 16, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY MAY 7, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1855

Introduced by Assembly Member Torres
(Coauthor: Senator Vargas)

February 22, 2012

An act to amend Section 2810 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1855, as amended, Torres. Employment: contractors: sufficient funds.

Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

This bill, in addition, would make these provisions applicable with regard to warehouse contractors.

Existing law provides for a rebuttable presumption affecting the burden of proof that there has been no violation of this requirement of sufficient funding if specified conditions are met, including that the contract or agreement be in writing. The California Public Records

Act requires state and local agencies to make public records available for inspection, subject to specified criteria, and with specified exceptions.

This bill would require that upon the request of the Labor Commissioner, the person entering into the written agreement or contract to provide to the Labor Commissioner a copy of the provisions of the contract or agreement, and any other documentation, as provided. The bill would exempt any documents received by the Labor Commissioner pursuant to this requirement from the California Public Records Act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2810 of the Labor Code is amended to
2 read:
3 2810. (a) A person or entity shall not enter into a contract or
4 agreement for labor or services with a construction, farm labor,
5 garment, janitorial, security guard, or warehouse contractor, where
6 the person or entity knows or should know that the contract or
7 agreement does not include funds sufficient to allow the contractor
8 to comply with all applicable local, state, and federal laws or
9 regulations governing the labor or services to be provided.
10 (b) There is a rebuttable presumption affecting the burden of
11 proof that there has been no violation of subdivision (a) where the
12 contract or agreement with a construction, farm labor, garment,
13 janitorial, security guard, or warehouse contractor meets all of the
14 requirements in subdivision (d).
15 (c) Subdivision (a) does not apply to a person or entity who
16 executes a collective bargaining agreement covering the workers
17 employed under the contract or agreement, or to a person who
18 enters into a contract or agreement for labor or services to be
19 performed on his or her home residences, provided that a family
20 member resides in the residence or residences for which the labor
21 or services are to be performed for at least a part of the year.
22 (d) To meet the requirements of subdivision (b), a contract or
23 agreement with a construction, farm labor, garment, janitorial,
24 security guard, or warehouse contractor for labor or services shall
25 be in writing, in a single document, and contain all of the following

1 provisions, in addition to any other provisions that may be required
2 by regulations adopted by the Labor Commissioner from time to
3 time:

4 (1) The name, address, and telephone number of the person or
5 entity and the construction, farm labor, garment, janitorial, security
6 guard, or warehouse contractor through whom the labor or services
7 are to be provided.

8 (2) A description of the labor or services to be provided and a
9 statement of when those services are to be commenced and
10 completed.

11 (3) The employer identification number for state tax purposes
12 of the construction, farm labor, garment, janitorial, security guard,
13 or warehouse contractor.

14 (4) The workers' compensation insurance policy number and
15 the name, address, and telephone number of the insurance carrier
16 of the construction, farm labor, garment, janitorial, security guard,
17 or warehouse contractor.

18 (5) The vehicle identification number of any vehicle that is
19 owned by the construction, farm labor, garment, janitorial, security
20 guard, or warehouse contractor and used for transportation in
21 connection with any service provided pursuant to the contract or
22 agreement, the number of the vehicle liability insurance policy
23 that covers the vehicle, and the name, address, and telephone
24 number of the insurance carrier.

25 (6) The address of any real property to be used to house workers
26 in connection with the contract or agreement.

27 (7) The total number of workers to be employed under the
28 contract or agreement, the total amount of all wages to be paid,
29 and the date or dates when those wages are to be paid.

30 (8) The amount of the commission or other payment made to
31 the construction, farm labor, garment, janitorial, security guard,
32 or warehouse contractor for services under the contract or
33 agreement.

34 (9) The total number of persons who will be utilized under the
35 contract or agreement as independent contractors, along with a list
36 of the current local, state, and federal contractor license
37 identification numbers that the independent contractors are required
38 to have under local, state, or federal laws or regulations.

39 (10) The signatures of all parties, and the date the contract or
40 agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, security guard, or warehouse contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement. Upon the request of the Labor Commissioner, any person or entity who enters into the contract or agreement shall provide to the Labor Commissioner a copy of the provisions of the contract or agreement, and any other documentation, related to paragraphs (1) to (10), inclusive, of subdivision (d). *Documents obtained pursuant to this section are exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).*

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section shall not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law

1 or regulation in connection with the performance of the contract
2 or agreement.

3 (2) An employee aggrieved by a violation of subdivision (a)
4 may also bring an action for injunctive relief and, upon prevailing,
5 may recover costs and reasonable attorney's fees.

6 (h) The phrase "construction, farm labor, garment, janitorial,
7 security guard, or warehouse contractor" includes any person, as
8 defined in this code, whether or not licensed, who is acting in the
9 capacity of a construction, farm labor, garment, janitorial, security
10 guard, or warehouse contractor.

11 (i) (1) The term "knows" includes the knowledge, arising from
12 familiarity with the normal facts and circumstances of the business
13 activity engaged in, that the contract or agreement does not include
14 funds sufficient to allow the contractor to comply with applicable
15 laws.

16 (2) The phrase "should know" includes the knowledge of any
17 additional facts or information that would make a reasonably
18 prudent person undertake to inquire whether, taken together, the
19 contract or agreement contains sufficient funds to allow the
20 contractor to comply with applicable laws.

21 (3) A failure by a person or entity to request or obtain any
22 information from the contractor that is required by any applicable
23 statute or by the contract or agreement between them, constitutes
24 knowledge of that information for purposes of this section.

25 (j) For the purposes of this section, "warehouse" means a facility
26 the primary operation of which is the storage or distribution of
27 general merchandise, refrigerated goods, or other products.